

DECEMBER 20, 1990

BOSTON REDEVELOPMENT AUTHORITY

SECOND AMENDMENT TO THE REPORT AND DECISION ON THE INTERVALE-MAGNOLIA APARTMENTS PROJECT FOR THE APPROVAL OF THE TRANSFER OF THIS PREVIOUSLY APPROVED AND DEVELOPED PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO A NEW MASSACHUSETTS LIMITED PARTNERSHIP AND FOR THE AUTHORIZATION OF SUCH PARTNERSHIP TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER SAID CHAPTER 121A.

A. Prior Proceedings. Reference is made to the following:

1. On July 28, 1977, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on a project known as Intervale-Magnolia Apartments (the "Project"). Such vote was approved by the Mayor of the City of Boston (the "Mayor") on August 8, 1977 and the vote as approved was filed with the Clerk of the City of Boston (the "City Clerk") on August 10, 1977. The Project, as more particularly described in the Report and Decision, consisted of 88 rental housing units at various scattered locations in the Dorchester and Roxbury sections of the City of Boston and operated pursuant to the requirements of a federal Department of Housing & Urban Development ("HUD") Section 8 Housing Assistance Payments Contract and the mortgage and regulatory requirements of the Massachusetts Housing Finance Agency ("MHFA"). Intervale-Magnolia Associates, a Massachusetts limited partnership, was approved in the Report and Decision as the Chapter 121A entity to own, operate and manage the Project.

2. On September 29, 1977, a certain Agreement under Chapter 121A, Section 6A, was executed by and between Intervale-Magnolia Associates and the City of Boston (the "6A Contract"). Subsequently, on December 5, 1979, a First Amendment to the 6A Contract was executed. Collectively, the 6A Contract and the First Amendment thereto shall be hereinafter referred to as the "Amended 6A Contract."

3. On December 17, 1987, the Authority voted to adopt a First Amendment to the Report and Decision (the "First Amendment"). Such vote was approved by the Mayor on December 30, 1987 and the vote as approved was filed with the City Clerk on January 6, 1988. The First Amendment authorized a transfer of the Project from the original Intervale-Magnolia Associates to a Intervale-Magnolia Associates II Limited Partnership as part of a resyndication by using low-income housing tax credits to create an infusion of capital for project rehabilitation and repair needs. No other changes in the Project were authorized at that time. Neither the transfer nor the resyndication took place and the original Intervale-Magnolia Associates retained ownership and control of the Project. Rescission of the vote authorizing the First Amendment is part of the Authority's Decision hereinafter set forth.

B. MHFA Actions. The following actions have been taken by MHFA which held the mortgage on the Project:

1. Foreclosure. On October 2, 1990, MHFA foreclosed on its mortgage in accordance with applicable laws and the properties, constituting the Project, were then acquired by the Massachusetts Housing Finance Agency Property Acquisition and Disposition Corporation (the "MHFA Holding Corporation"). The MHFA Holding Corporation is a Massachusetts Chapter 180 charitable corporation affiliated with and controlled by MHFA. Its function is to acquire when appropriate MHFA mortgaged projects at foreclosure, manage them on an interim basis and dispose of them all to prevent the loss of federal and state housing subsidies and to preserve their low income use.

2. Rehabilitation Program. Because of the deteriorated condition of the Project properties, MHFA secured or will secure funding commitments from three sources for an extensive rehabilitation program (the "Rehabilitation Program"). Commitments include an allocation of low-income housing tax credits by the state Executive Office of Communities and Development ("EOCD") to raise equity funds through syndication, EOCD Weatherization funds and HUD Flexible Subsidy funds. Below is a projected summary of funding sources:

Owner Equity	\$1,572,087
Weatherization Funds	519,620
<u>HUD Flexible Subsidy</u>	<u>815,380</u>
 TOTAL	 \$2,907,087

The foregoing are projected amounts and the exact funding available from each may be less based on final syndication and grant and/or loan approvals.

3. Selection of New Owner. As a result of a Request for Proposal process, MHFA has tentatively selected Long Bay Management Company ("Long Bay") as the new owner, contractor and management agent of and for the Project. This selection was based in part on Long Bay's commitment to future sale of the Project properties to a tenant cooperative or tenant-controlled entity. Long Bay proposes to organize a new Massachusetts limited partnership to acquire the Project, namely, "Morrant Bay Limited Partnership". The General Partners may be Long Bay and a tenant-controlled corporation as a co-general partner.

4. 6A Contract. In conjunction with the proposed transfer by MHFA to Morratt Bay Limited Partnership, Long Bay is seeking a change in the payment-in-lieu of tax formula in the Amended 6A Contract. Specifically, Long Bay proposes to pay annually to the City of Boston the lesser of: (i) ten percent (10%) of collected gross income; or (ii) taxes that would otherwise be levied pursuant to Massachusetts General Laws Chapter 59 ("Chapter 59"). Provided further, that in the event the ten percent (10%) of collected gross income exceeds the Chapter 59 amount, then the difference would be placed in the Project's funded replacement

MEMORANDUM

DECEMBER 20, 1990

TO: BOSTON REDEVELOPMENT AUTHORITY and
STEPHEN COYLE, DIRECTOR

FROM: BRIAN DeLOREY, DIRECTOR: MIDTOWN CULTURAL DISTRICT
KEVIN MORRISON, DEPUTY GENERAL COUNSEL

SUBJECT: SECOND AMENDMENT TO THE REPORT AND DECISION ON THE
INTERVALE-MAGNOLIA APARTMENTS CHAPTER 121A PROJECT
("INTERVALE-MAGNOLIA PROJECT")

EXECUTIVE

SUMMARY: Request adoption of the Second Amendment to the Report and Decision on the Intervale-Magnolia Project (the "Second Amendment") which involves the approval of a transfer of a 88 unit scattered-site housing development, by and through the Massachusetts Housing Finance Agency, to Marrant Bay Limited Partnership to accomplish a major rehabilitation program with approximately \$2,907,087 in new funding.

Project Background

In July, 1977, the Authority adopted the original Report and Decision on the Intervale-Magnolia Project which involved the rehabilitation of 88 housing units at scattered locations in the Roxbury and Dorchester neighborhoods with mortgage financing from the Massachusetts Housing Finance Agency ("MHFA") and rent subsidies under the federal Department of Housing and Urban Development ("HUD") Section 8 Program. Over time, the condition of the units deteriorated and in 1987 the Authority adopted a First Amendment to the Report and Decision (the "First Amendment") authorizing a resyndication to raise equity funds for rehabilitation purposes. The resyndication did not take place and the rehabilitation work was never initiated. In order to remedy management deficiencies, MHFA foreclosed on its mortgage in October, 1990 and acquired the Project properties through an affiliated holding corporation, the Massachusetts Housing Finance Agency Property Acquisition and Disposition Corporation (the "MHFA Holding Corporation").

Rehabilitation Program and Project Transfer

MHFA has secured or will secure funding commitments from three sources for an extensive rehabilitation program. Commitments include an allocation of low-income housing tax credits by the State Executive Office of Communities and Development ("EOCD") to raise equity funds through syndication, EOCD Weatherization funds and HUD Flexible Subsidy funds. Below is a projected summary of funding sources:

Owner Equity	\$1,572,087
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The foregoing are projected amounts and the exact funding

available from each may be less based on final syndication and grant and/or loan approvals.

Through a Request for Proposal process, MHFA has sought a new owner, contractor and management agent to take over the project and undertake the rehabilitation program. MHFA has selected Long Bay Management Company (the principals being Kenneth I Guscott, George R. Guscott and Cecil H. Guscott) ("Long Bay"). This selection was based in part on Long Bay's commitment to insuring long-term affordability through the future sale of the Intervale-Magnolia Project properties to a tenant cooperative or tenant-controlled entity. Long Bay proposed to organize a new Massachusetts limited partnership to acquire title, namely Marrant Bay Limited Partnership.

Since the Intervale-Magnolia Project is subject to Chapter 121A, MHFA is seeking the approval of the project transfer by the Authority. In addition, MHFA has sought changes to the project's payment-in-lieu tax agreement, the 6A Contract, to enhance affordability. Negotiations have been on-going with regard to acceptable changes to the 6A Contract with the City's Commissioner of Assessing.

In order to take advantage of the allocation of tax credits, the transfer of the Intervale-Magnolia Project to the proposed new owner, Marrant Bay Limited Partnership by the MHFA Holding Corporation, must be completed by the end of 1990. Therefore, it is recommended that the Authority adopt the enclosed Second Amendment as presented.

The Office of General Counsel has determined that this proposed project transfer and the related rehabilitation program, do not constitute a "fundamental change" in accordance with the Acts of 1960, Chapter 652, Section 13A, as amended, and a public hearing on the amendment is not required.

An appropriate vote follows:

VOTED: That the document presented at this meeting entitled "SECOND AMENDMENT TO THE REPORT AND DECISION ON THE INTERVALE-MAGNOLIA APARTMENTS PROJECT FOR THE APPROVAL OF THE TRANSFER OF THIS PREVIOUSLY APPROVED AND DEVELOPED PROJECT UNDER MASSACHUSETTS GENERAL LAWS (Ter. Ed.) CHAPTER 121A, AS AMENDED, AND CHAPTER 652 OF THE ACTS OF 1960, AS AMENDED, TO A NEW MASSACHUSETTS LIMITED PARTNERSHIP AND FOR THE AUTHORIZATION OF SUCH PARTNERSHIP TO ACT AS AN URBAN REDEVELOPMENT LIMITED PARTNERSHIP UNDER SAID CHAPTER 121A", be and hereby is approved and adopted in all respects.

reserve to be controlled by MHFA.

C. Authority Action. The Authority is acting hereunder pursuant to Chapter 121A, Sections 11 and 16A, and Chapter 652, Section 13A, and all other applicable sections or provisions of both statutes. With regard to Chapter 121A, Section 16A, MHFA, by and through the MHFA Holding Corporation, has elected option (2) under said section, that is, to transfer the Project to a new ownership entity subject to all of the provisions of Chapter 121A and Chapter 652. Thus, approval of the transfer by the Authority under respectively Chapter 121A, Section 11, and Chapter 652, Section 13A, is required because of changes in the Project's financing program and potential changes to the Amended 6A Contract. The Authority has considered all information and material provided by the MHFA sufficient in the Authority's judgment to enable it to act hereunder.

D. Decision. The Authority hereby acts as follows:

1. Rescission of First Amendment Vote. The Authority hereby rescinds in all respects its vote of December 17, 1987 which adopted the First Amendment to the Report and Decision.

2. Approval of Transfer. The Authority hereby approves the transfer of the Project to Marrant Bay Limited Partnership by the MHFA Holding Corporation and the Rehabilitation Program subject to any and all terms and conditions herebefore or hereafter imposed by MHFA to consummate or finalize the transfer. Such terms and conditions are incorporated by reference as if fully set forth herein. Provided, however, if there should be any conflict or inconsistency between MHFA's terms and conditions and those of the various agreements mandated by the Authority's rules and regulations set forth below in Subsection D(4), the Authority's rules and regulations or the terms of the agreements mandated shall apply and govern. Marrant Bay Limited Partnership is authorized to act as and shall be an Urban Redevelopment Limited Partnership subject in all respects to the provisions of Chapter 121A.

3. General Findings and Determinations. The Authority hereby finds and determines that: (a) the Project changes approved in the Second Amendment do not constitute a "fundamental change" in accordance with Chapter 652, Section 13A; (b) except to the extent inconsistent with or contrary to the provisions of this Second Amendment, all of the findings, determinations, approvals and consents contained in the original Report and Decision are hereby ratified and conformed in all respects; (c) this Second Amendment conforms to and complies with the provisions of Chapter 121A, Chapter 652, and the Authority's "Rules and Regulations Governing 121A Projects in the City of Boston", as amended; and (d) any procedural or other requirements of applicable statutes and rules and regulations which may not have been complied with in the Authority's proceedings in connection herewith are hereby waived.

4. Rules and Regulations. Notwithstanding the minimum

standards for financing, construction, maintenance and management of the Project and any other rules and regulations set forth or referenced in Section I of the original Report and Decision to the contrary, the Authority hereby imposes as additional rules and regulations on the transfer of the Project and requires that the proposed transferee, Marrant Bay Limited Partnership, prior to filing an application with the Inspectional Services Department of the City of Boston for any building permit, to (a) enter into a Regulatory Agreement under Chapter 121A, Section 18C, the terms and conditions of which are acceptable to the Authority's Director; and (b) notwithstanding the proposed changes set forth in Subsection B(4) to the contrary, enter into a further Amendment to the Amended 6A Contract, the terms and conditions of which are acceptable to the Commissioner of Assessing of the City of Boston (the "Commissioner of Assessing"). Further, MHFA shall enter into an agreement with both the Authority and the Commissioner of Assessing whereunder MHFA will have the obligation to monitor the operation of the Project and provide financial and other reports (the "MHFA Agreement"). The terms and conditions of the MHFA Agreement must be acceptable to both the Authority's Director and the Commissioner of Assessing. The Regulatory Agreement shall contain provisions acceptable to the Authority's Director whereunder the Marrant Bay Limited Partnership shall be required to sell or otherwise convey the Project to a tenant cooperative or other tenant-controlled entity no later than 15 years from the date of the transfer. The Authority's Director at his discretion may extend the time for entering into either or both the Regulatory Agreement and that further Amendment to the Amended 6A Contract.

5. Report and Decision. All provisions of the original Report and Decision not specifically amended or revised by, or in conflict with, this Second Amendment shall remain in full force and effect.

E. Estoppel Certificates. The Authority's Director is authorized to provide to governmental bodies, including but not limited to MHFA, and other interested parties, Estoppel Certificates or like instruments, at his discretion, which confirm matters covered by this Second Amendment.

F. Severability. In the event any provision of this Second Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.